IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3689 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

M.R. PRAJAPATI- DECD. BY HIS HEIR - TARSIDAS M. PRAJAPATI

Versus

COLLECTOR

Appearance:

MR MC BAROT for Petitioner No. 1-2
Ms. Archana Rawal, AGP for the Respondent.

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 05/03/2004

ORAL JUDGEMENT

The petitioners have filed this petition under Article 226 of the Constitution of India challenging the order passed by respondent no.1 Collector on 23rd March, 1987 which was confirmed in Revision by the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat on 3rd February, 1990.

2. It is the case of the petitioners that the petitioners are the agriculturists and they belong to backward community. The deceased father of the petitioners namely Prajapati Mohanbhai Ranchhodbhai was regranted the land by the Prant Officer by his order dated 27th October, 1961. The land is situated on the outskirts of village Jetalpur being block no.16 admeasuring 2.23 gunthas. It is further stated in the petition that the land was regranted in the name of joint family of the deceased father of the petitioners who was the eldest person in the family. was a joint family and the petitioners were the eldest It is further stated that on the basis of the panchnama drawn by the Talati of village Jetalpur, the Mamlatdar, Mahesana had initiated proceedings under Tenancy Act against the petitioners being Tenancy case no. 4 of 1977 and it was alleged that there were tenants in the said land. However, the Mamlatdar, Mahesana held in that case that there was no tenant in the land and to that effect entry was made on 18th December, 1978.

3. It was further stated that the respondent herein, namely, the Collector had issued a show cause notice to the petitioners calling upon them to show cause as to why the land should not be restored to the Government as the petitioners have committed breach of the conditions of grant. The petitioners have given a detailed reply to the said show cause notice wherein they have contended that they have not committed any breach of the condition as alleged. The reply of the petitioners was not considered by the Collector in its true perspective and the Collector has cancelled the regrant of the land vide his order dated 23rd March, 1987.

4. Being aggrieved by the said order of the Collector, the petitioners filed Revision Application before Additional Chief Secretary (Appeals), Revenue Department, Mahesana and the said Revision was dismissed and it is this order of the Additional Chief Secretary passed in Revision Application, which is under challenge in this petition.

5. Mr. M.C.Barot, the learned advocate

appearing for the petitioners submits that the land was regranted to the petitioner's deceased father way back in the year 1961. Thereafter, tenancy proceedings were initiated in the year 1987 by the Mamlatdar and the Mamlatdar has also held that there were no tenants on the said land. Thereafter, in the year 1987, the Collector initiated proceedings and issued show cause notice. Despite the fact that the petitioners have explained their position in detail to the Collector, the reply of the petitioners was not considered by the Collector and regrant of the land was cancelled on the ground that the petitioners have committed breach of condition. Mr. Barot also submitted that the petitioners have not committed any breach of condition and the panchnama was wrongly drawn against the petitioners. Mr. Barot has further submitted that the petitioners are small farmers and belong to OBC for which there is a circular issued by the Government of Gujarat, Revenue Department on 16th March, 1982 wherein it is stated that when a person belongs to backward class community and commits breach of new tenure land and if it is the first breach in that case, the Collector should examine the circumstances and if the Collector is satisfied, the Collector should regrant the land to the same person on Ek Sali Patta for two years and thereafter, if the Collector is satisfied with the behaviour of the person concerned, the Collector would regrant the land to the same person. Mr. Barot has further submitted that in the same circular even a provision is made with regard to the person belonging to non-backward class and if he commits any breach for the first time, then in that case also, the Collector should examine the circumstances and if the Collector is satisfied, then the Collector should regrant the land to the same person. Mr. Barot has therefore, submitted that the Collector has not considered the guidelines which were issued by the State Government and the benefit contained in the said guidelines should have been given to the petitioners even if it is assumed that any breach of condition is committed by the petitioners. Mr. Barot has further submitted that the Additional Chief Secretary (Appeals) has confirmed the order of the Collector to the effect that the petitioners have not obtained permission for succession on inheritance. The petitioners' case was that the petitioners are joint family members and the Mamlatdar has also held that it is not a case of tenants and to that effect an entry was also made. He has therefore, submitted that there was no reason to cancel the regrant of the land to the poor petitioners. He has also submitted that the petitioners are having family of nine persons and their economic condition is very weak and they belong to downtrodden class. He has therefore,

submitted that the order of regrant should not have been cancelled and orders passed by both the authorities should be quashed and set aside.

6. Ms. Archana Rawal, learned Assistant Government Pleader appearing for the respondent has submitted that both the authorities have passed concurrent orders and this Court should not interfere with the same in exercise of extraordinary writ jurisdiction under Article 226 of the Constitution of India. She has further submitted that the petitioners' stand is not consistent. Initially, it was contended that there was some mistake in passing entry in the revenue record and thereafter, it was contended that the land belongs to the joint family and there was partition amongst the members. No permission was taken for such partition of the land. In this view of the matter, she has submitted that the orders passed by the authorities below should be confirmed and regrant of the land cancelled by the authorities should be upheld.

7. I have heard the learned advocate for the petitioners and also considered the submissions made by the learned Assistant Government Pleader. I have also gone through the orders passed by the authorities below and the submissions made in the petition. This petition was admitted on 11.5.1990 and this Court has passed the order of status quo on that day. The petitioners are in possession of the land since 1961. The petitioners' main reliance is on the circular issued by the State Government wherein it is stated that even if there is any breach of the new and impartible tenure of land, the regrant of land should not be cancelled. It is an admitted position tht Prant Officer, Mahesana had regranted the disputed land by an order dated 27.10.1961 and an entry no. 383 was made in the record of rights on 6.2.1962. Village form no. 7/12 showed the names of Shri Mohanlal Ranchhodbhai, Shri Khodabhai Joitaram and Shri Dahyabhai Khengarbhai as agriculturists in 1973-74 to 1978-79. Entry no. 555 made on 28.8.1978 shows that they were not cultivating the disputed land as tenants but as co-sharers being brothers. Even in the statement of the petitioners recorded on 12.2.1987, it ws found tht the petitioners' deceased father was taying in joint family and after the death of the petitioners' father, Shri MOhanlal as well as uncle Shri Joitaram, the land was partitioned amongst the petitiners as well as Shri Khodabhai Joitaram and Becharbhai Ranchhodbhai. Simply becuse necessary permission was not obtained, on that ground, regrant of the land should not be cancelled. It is not a serious breach which warrants cancellation of

regrant of the land. In this view of the matter, since the petitioners are in possession of the land for the last more than 30 years and they are themselves cultivating the land jointly with some persons of the family, it would not deprive the petitioners of the benefit of the land in question. In any case, if the respondent authority is of the view that there was a breach, then as laid down in the circular, a token penalty may be levied but the petitioners' regrant of the land cannot be cancelled on that ground.

8. In view of these facts and considering the circular issued by the State Government, this Court is of the view that the orders passed by the authorities below are not in accordance with law. Both these orders are, therefore, quashed and set aside. The petition is allowed. Rule is made absolute without any order as to costs.

(K.A.Puj,J)

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